Supreme Court E-Library

accused should not be made to suffer for the delay in the disposition of their case especially when there is no showing that they contributed to such delay.

The rule that trial courts should receive evidence in capital cases notwithstanding a plea of guilty is both old and well-settled. Time and again this Court has remanded cases to trial courts for compliance with the rule. It passes understanding why some trial courts still persist in ignoring the rule. Considering that the Supreme Court has disciplinary power over judges of inferior courts and considering further that the misfeasance is a matter of record, I am of the opinion that where a capital case is remanded to a trial judge for reception of evidence, an appropriate penalty can simultaneously be imposed on the erring judge without the necessity of conducting formal administrative proceedings. *Res ipsa loquitur.*

EN BANC

[G.R. No. L-29980. December 14, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SANTIAGO ANG, MAXIMINIO SUNGCADOS, LEONILO HANGINON, LUIS DE GUZMAN, RICARDO TIBAY and CESAR ORIAS,** *defendants-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CONFESSION; ORAL CONFESSION IS ADMISSIBLE; CASE AT BAR.**— The oral confession of accused Ang, Sungcados and Hanginon were reduced into writing, but for reasons only known to them, they refused to sign the same. These oral confessions were established through the testimonies of Sgts. Victor Lascuña and Luis Gonzaga. Oral confessions are admissible, for it is

Supreme Court E-Library

not necessary that the confession be in writing. What is necessary is credible evidence that the oral confession was really made.

2. **ID.; ID.; WITNESSES; TESTIMONY; MINOR INCONSISTENCIES THEREOF CANNOT AFFFECT THEIR CREDIBILITY; CASE AT BAR.**— The narrations of Cristina, Benigna and Gloria as to what happened in the house of victim Fernando Saraste in the twilight of February 18, 1963, clearly coincide with each other and give a vivid picture of the events. They testified in a simple, direct manner, indicative of sincerity, and strongly manifesting that these witnesses were telling the truth. There is no known or shown motive why those witnesses should falsely testify against the accused. The inconsistencies in the narrations of Gloria Nacis and Benigna Zamora on minor details cannot adversely affect their credibility. Minor inconsistencies on testimonies are indicative that the witnesses were not coached nor rehearsed.

3. **ID.; ID.; IDENTIFICATION OF THE ACCUSED; CASE AT BAR.**— Witnesses Cristina, Benigna and Gloria were able to identify the accused because the crime was perpetrated when there was still day light. In the month of February, there is still light at five in the afternoon and even up to an hour late. These witnesses had sufficient time to identify the accused because the crime took place for about one hour, and both Benigna and Gloria were raped by persons in the group.

4. **ID.; ID.; ALIBI; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED BY THE WITNESSES; CASE AT BAR.**— The defense of alibi cannot prevail over the positive identification of the accused by witnesses. Victims Benigna Zamora and Gloria Nacis positively identified all the accused. As to accused Luis de Guzman's defense of alibi, the same cannot prevail over the positive identification made by the victim Benigna Zamora who recognized and remembered Luis as the person who raped Benigna in the afternoon of February 18, 1963. Alibi is easy to fabricate and cannot prevail over the positive identification by a credible witness. Likewise, the defense of alibi interposed by accused Cesar Orias and Ricardo Tibay cannot prevail over their positive identification by Benigna Zamora, Gloria Nacis and Nestor Nuñez.

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5. ID.; ID.; ID.; REQUIREMENT FOR THE DEFENSE OF ALIBI TO PROSPER.— For alibi as a defense to prosper, it must be clear and convincing as to preclude the possibility of the presence of the accused at the scene of the crime, while the evidence as to identification of the accused must be weak and insufficient. Accused Ang, Hanginon and Sungcados were not precluded from being present at the scene of the crime because they were all residents of the barrio of Guihing, Hagonoy, Davao, near and adjacent to Paligue, Padada, Davao, scene of the crime.

6. ID.; CRIMINAL PROCEDURE; NEW TRIAL; NEWLY DISCOVERED EVIDENCE, NOT A CASE OF.— While this case was pending automatic review, accused Cesar Orias and Ricardo Tibay filed a petition for new trial with this Court, on the ground of newly discovered evidence (the alleged statement of prisoner Quintin Ybañez that it was his group that authored the crime for which the accused were convicted in this case). When asked to comment on said petition, the Solicitor General commented that the alleged statement of prisoner Quintin Ybañez cannot be considered newly discovered evidence, and that the same is unreliable coming from a death convict who refuses to reduce the same in writing. This Court denied the petition for new trial for lack of merit.

APPEARANCES OF COUNSEL

Maskariño & Assocista for appellant Luis de Guzman.
Primo L. Ocampo for appellants Tibay and Orias.
Tolentino & Fernandez for other appellants.
Office of the Solicitor General for appellee.

D E C I S I O N

PER CURIAM:

At about twilight of February 18, 1963, nine armed men entered and robbed the house of Fernando Saraste located at Padada, Davao, shot and killed the latter, and raped two housekeepers residing therein.[1]

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[1] p. 78, Original Record.

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After investigation and apprehension of the accused by the local police authorities at the instance of then Governor Duterte of Davao,[2] Criminal Case No. 8317 was filed against Luis de Guzman; Criminal Case No. 8376, against Ricardo Tibay; Criminal Case No. 8629 against Cesar Orias; and Criminal Case No. 8119, against Santiago Ang, Maximinio Sungcados, and Leonilo Hanginon, all in the Court of First Instance of Davao, Branch III (Judge Manases G. Reyes).[3]

Inasmuch as all the above criminal cases arose from the same incident and involved all of the accused, they were consolidated into one Criminal Case No. 8119,[4] the amended information, being:

"The undersigned accuses Santiago Ang, Maximo Sungcados, Leonilo Hanginon, Luis de Guzman, Ricardo Tibay, and Cesar Orias of the crime of Robbery in Band with Homicide and Rape, under Art. 294, in relation to Arts. 295 and 296 of the Revised Penal Code, committed as follows:

"That on or about February 18, 1963, in the Municipality of Padada, Province of Davao, Philippines, and within the Jurisdiction of this Court, the abovementioned accused, conspiring and confederating together and with John Smith, Peter Smith and Robert Doe, who are still at large, and helping one another, armed with firearms and other deadly weapons and in band, entered the house owned and inhabited by Fernando Saraste and his family by forcibly breaking the door thereof, and once inside, with intent of gain, and with violence against and intimidation of the inmates thereof, did then and there wilfully, unlawfully and feloniously take, steal and carry away the following:

"One (1) transistor radio, worth	175.00
One (1) duly licensed Cal. .22, Revolver	450.00
Cash	10,000.00

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[2] Exhibit "A".

[3] p. 74, Original Record.

[4] pp. 80-81, *Id.*

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valued in the total amount of ₱10,625.00, belonging to Fernando Saraste, to his damage and prejudice in the aforesaid amount; that on the occasion of said robbery, and in pursuance to said conspiracy, said accused, with intent to kill, did then and there wilfully, unlawfully and criminally attack, assault and shoot Fernando Saraste thereby inflicting upon him mortal wounds which caused his death, and further, on the same occasion and likewise in pursuance of said conspiracy, same accused, with lewd designs and by means of force and intimidation, did then and there wilfully, unlawfully and criminally have carnal knowledge of Gloria Nacis and Benigna Zamora against their will.

"Contrary to law."[5]

After a protracted trial, the lower court rendered a judgment of conviction on July 27, 1968, with dispositive part as follows:

"Considering the seriousness of the crime charged, robbery in band, with homicide, and with rape, and considering the moral certainty of the Court that the guilt of the accused has been established, it is the painful and disagreeable duty of this Court to impose the maximum penalty of Death for each accused.

"In this time of rampant criminalities when the criminal elements and the lawless in our midst seem to bid defiance to forces of Peace and Order and sneeringly mocks the majesty of the law, it is at high time that we make a determined stand to face this crisis so that our action may serve as a deterrent to those criminally inclined and so that people may know that our courts are still there unafraid and determined and will not hesitate to impose even the supreme penalty when the evidence so warrants.

"Further, the accused are hereby ordered to indemnify the heirs of the deceased proportionately in the sum of ₱10,000.00 with no subsidiary imprisonment in case of insolvency and to pay the costs.

"Accused Luis de Guzman and Santiago Ang are further ordered to indemnify the two offended parties here victims of the rape committed, in the amount of ₱2,000.00 for each of them without pronouncement as to the acknowledgment of the offspring should there be any, because the law prohibits such in this case because

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[5] pp. 78-79. *Id.*

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the character of its origin would have prevented it on account of the accused being married; and all the accused to indemnify further the offended party in the sum of ₱175.00 the value of the transistor radio; ₱450.00 the value of the .22 caliber revolver, as well as the sum of ₱10,000.00 Philippine Currency which was taken in the commission of this robbery without subsidiary imprisonment in case of insolvency by reason of the penalty imposed.

"SO ORDERED."[6]

The injury suffered by the victim Fernando Saraste as appearing in Medical Certificate[7] issued by Dr. Vicente T. Florida, Jr., Municipal Health Officer of Padada, Davao, follows:

"Feb. 19, 1963

"This is to certify that I have autopsied Mr. Fernando Saraste with the following findings:

"Bullet wound penetrating with an entrance at the 8th interspace on the left chest posterior, about 4 inches from the midline, coursing upward and medially and to the left side to make an exit at the 3rd interspace, about 2-½ inches from the midline anteriorly and to the left, penetrating the heart and scraping part of the vertebra.

"Cause of death — Internal hemorrhage."[8]

The prosecution's version of the crime is as follows:

Prior to and on February 18, 1963, Fernando Saraste was residing at Paligue, Padada, Davao. Living with him in his house thereat were his niece and godchild Benigna Zamora, then 15 years old,[9] and two other nieces, Gloria Nacis and Cristina Sordilla[10] who were then 14 and 12 years old, respectively.[11]

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[6] pp. 283-284. *Id.*

[7] Exhibit "H".

[8] p. 28, Exhibits.

[9] p. 97, t.s.n., May 16, 1966.

[10] pp. 97, 98, *Id.*

[11] p. 140, t.s.n., May 18, 1966; p. 11, t.s.n., May 30, 1966.

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Since December 17, 1963, Fernando Saraste had been the owner and licensed possessor of a .22 caliber revolver valued at ₱450.00.[12]

On February 16, 1963, Fernando Saraste called for his nephew, Eugenio Ramirez, and asked the latter to accompany him to Davao City the following week as he would deposit in the bank an amount of less than ₱10,000.00.[13]

At about 4:00 p.m. on February 18, 1963, Nestor Nuñez, a farmer residing at Padada, Davao, while taking care of his carabao, saw nine persons sitting on the highway under a mango tree, about 100 meters from the house of victim Fernando Saraste. When Nestor approached the group, one, identified later as accused Cesar Orias, stood up and asked Nestor if he had finished plowing to which the latter answered, "Yet yet."[14]

On the same date, at about four in the afternoon, victims Benigna Zamora and Gloria Nacis were feeding the hogs in the yard near the house of Fernando Saraste, when they saw nine armed men pass by the house slowly, looking at the house and around the place. Benigna later identified accused Santiago Ang, Luis de Guzman and Cesar Orias among the nine. There was also a man with wide forehead and slanting eyes like that of a chinaman in the group.[15] Aside from Benigna, Gloria was also able to identify out of the nine men accused Cesar Orias, Luis de Guzman and Santiago Ang.[16]

At about five o'clock of the same afternoon, while Cristina Sordilla, another niece of victim Fernando Saraste, was in the kitchen of the house, together with Benigna Zamora then cooking,

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[12] Exhibits "E" and "E-1", pp. 25-26, Exhibits; pp. 55-59, t.s.n., Oct. 18, 1966.

[13] pp. 15-16, t.s.n., March 23, 1966.

[14] pp. 59-61, t.s.n., March 24, 1966.

[15] pp. 97-100, t.s.n., May 16, 1966.

[16] pp. 141-144, t.s.n., May 18, 1966.

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and Gloria Nacis, listening to the radio, the nine men returned to the vicinity of the house near the kitchen.[17]

The man with wide forehead and slanting eyes (not apprehended) tried to borrow from Benigna a glass with which to drink water from. However, no glass was available.

He subsequently asked for the whereabouts of Faustino Nacis and the victim Fernando Saraste. Benigna answered him that Faustino Nacis was taking care of the carabao in the coconut grove, while Fernando Saraste was upstairs in the sala of the house. Suddenly, accused Luis de Guzman asked for the surrender of the gun of Fernando.[18]

When Cristina Sordilla heard the demand for the surrender of the gun of Fernando Saraste, she rushed to the sala and informed Fernando of the demand. He refused to surrender the gun and instead rushed to his room followed by Cristina.[19]

Benigna Zamora, who at that moment was about to go down the house, saw accused Cesar Orias with a firearm. Accused Luis de Guzman placed his arm around Benigna's shoulder and brought her up the house to the sala. She saw the man with slanting eyes near the window and she heard a gong sound. Benigna also saw Santiago Ang, armed and with a flashlight in the sala.[20]

Gloria who was in the sala, heard footsteps going upstairs and she saw Cesar Orias armed with a revolver. She also saw Luis de Guzman, Santiago Ang, and the fellow with slanting eyes. They were all armed. Because of fear, Gloria jumped out of the window to escape to the copra dryer, with Santiago Ang in pursuit.[21]

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[17] pp. 12-14, t.s.n., May 30, 1966; p. 100, t.s.n., May 16, 1966; pp. 145-146, t.s.n., May 18, 1966.

[18] pp. 15-16, t.s.n., May 30, 1966; pp. 101-103. t.s.n., May 16, 1966; pp. 145-146, t.s.n., May 18, 1966.

[19] pp. 15-16. t.s.n., May 30, 1966.

[20] pp. 103-104, t.s.n., May 16, 1966.

[21] pp. 147-153, t.s.n., May 18, 1966.

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After Fernando Saraste entered his room, followed by Cristina Sordilla, he closed the door to the room and sounded the gong. Cristina heard men going up the house to the sala. These men tried to push the door to the room open, while Fernando Saraste and Cristina tried to keep it closed. Fernando Saraste released his hold on the door and rushed to the window of the bedroom. At the same time he pulled his revolver from his waist. Cristina followed Fernando in order to jump out of the window to escape. She was not able to do so, because she saw a man pointing a pistol at Fernando Saraste from the window of the sala, so she hid herself behind some mats inside the bedroom. She heard two shots from the window of the sala, and the door to the room was opened. Santiago Ang, Luis de Guzman and Cesar Orias, all armed, entered the room and ransacked its contents. The man with slanting eyes held Cristina and told her not to move. He asked Cristina where the money was hidden. She was ordered to help in the search for money, otherwise she would be killed. A *tampipi* was ransacked and Cristina found two bundles of money (20 and 10 peso bills), a bundle about two inches thick. The said man took the money and placed it in his pocket. Cesar Orias, Luis de Guzman and Santiago Ang were in the sala at that time. The men continued in their search and Cristina was told to sit down on a bench in the sala.[22]

On the other hand, Benigna Zamora was brought to the kitchen by Luis de Guzman, where she was raped at gunpoint. After the rape was consummated, Luis brought Benigna to the sala where she again saw Cesar Orias, Santiago Ang and the man with slanting eyes. The latter took hold of Benigna and asked her to locate and produce the money. So she helped look for the money. Later, this man with slanting eyes forced her to lie down among the scattered things, and there she was again raped.[23]

When Gloria Nacis jumped out of the window to escape to the copra dryer, followed by accused Santiago Ang, she was

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[22] pp. 16-25. t.s.n., May 30. 1966.

[23] pp. 105-108. t.s.n., May 16. 1966.

Supreme Court E-Library

not able to go far because Ang caught her. She was brought by Ang to the *papaya* grove. At that time, she saw accused Leonilo Hanginon, also armed. Accused Ricardo Tibay was holding a firearm in the yard, while Maximo Sungcados, another accused, was holding a gun.[24]

In the *papaya* grove, accused Santiago Ang forced Gloria to sit down and warned her not to shout. Gloria was brought near the toilet, ordered to remove her panty, and was raped by Santiago Ang. The person with the wide forehead and slanting eyes also raped her.[25]

Gloria was then returned to the house and asked to help look for money. She saw things scattered inside the house.[26]

After Cristina Sordilla was told to sit on a bench in the sala of the house, Gloria Nacis came from the kitchen followed by the man with slanting eyes, pointing a gun at Gloria. Cristina again heard shots from downstairs. Then, Faustino Nacis, with his two children, arrived from the kitchen accompanied by Santiago Ang. Benigna Zamora came from the kitchen accompanied by the man with slanting eyes. Cristina, Benigna, Gloria, together with Faustino Nacis and his two children, were ordered to sit on the bench and not to run away. The group then left.[27]

After a while, when things had quieted down, Gloria Sordilla arrived with policemen. Cristina, Benigna, Gloria Nacis, and the others in the group, saw the body of Fernando Saraste, with blood on his breast, lying face up on the ground beneath the window of his room. Fernando's revolver which he was holding when he rushed to the window of the room followed by Cristina, was no longer there. The radio was also missing.[28]

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[24] pp. 149-153, t.s.n., May 18, 1966.

[25] pp. 153-154, t.s.n., May 18, 1966.

[26] p. 154, t.s.n., May 18, 1966.

[27] pp. 26-29, t.s.n., May 30, 1966; pp. 109-110, t.s.n., May 16, 1966; pp. 155-156, t.s.n., May 18, 1966.

[28] pp. 29-31, t.s.n., May 30, 1966; pp. 111-112, t.s.n., May 16, 1966; pp. 157-158, t.s.n., May 18, 1966.

Supreme Court E-Library

As a corroborative witness, Narciso Solis, a farmer residing at Paligue, Padada, Davao, narrated that at 5:00 p.m. on February 18, 1963 he was in the vicinity of the house of Fernando Saraste. He saw nine persons and one of the nine asked Narciso if he had finished plowing and for the whereabouts of Faustino Nacis. The other eight surrounded the house of Fernando Saraste. He heard it when the gong sounded inside the house. He saw Gloria running from the house of Fernando Saraste, chased by a man who was able to catch her. The man brought Gloria to the papaya grove. He heard shots from the house of Saraste. He also saw Benigna Zamora with Luis de Guzman holding a gun at her. He saw four persons out of the nine enter the house. At this point, Narciso was able to run away.[29]

Found missing after the robbery in the house of Fernando Saraste, were: ₱10,000.00; a radio valued at ₱175.00 and a .22 caliber revolver valued at ₱450.00.[30]

On February 19, 1963, the day after the crime was committed, Dr. Vicente Florida, Municipal Health Officer of Padada, Davao, upon the request of the Chief of Police of Padada, Davao, conducted an internal examination of the secretion of the vaginas of victims Benigna Zamora and Gloria Nacis. They told Dr. Florida they were raped. No sperm cells were found on both women, but the doctor found that they were no longer virgins.[31]

As to the apprehension of accused Santiago Ang, his pointing to his co-accused Leonilo Hanginon and Maximo Sungcados, their alleged verbal confessions, the identification of the accused from pictures shown to the victims, and the reenactment of the crime participated in by accused Sungcados, several police authorities testified, including Sergeant Victor C. Lascuña of the Municipal Police Force of Panabo, Davao; Sergeant Luis

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[29] pp. 75-83, t.s.n., March 24, 1966.

[30] pp. 24, 25, 27, 28, t.s.n., March 23, 1966; pp. 26-27, t.s.n., Oct. 18, 1966; Exhibit "E".

[31] pp. 37-40, t.s.n., January 19, 1966.

Supreme Court E-Library

Gonzaga of Babak, Davao; Corporal Exequiel Sayson of Padada, Davao; Chief of Police Juanito Maturan of Makilala, Cotabato; and Jacinto Romero, Chief of the Police Affairs Division, Office of the Governor of Davao.[32]

The defense, consisting of alibi, denial, alleged threat and intimidation to extract confessions from the accused, and that some of the prosecution principal witnesses were paid to testify, is as follows:

Delfin Gillado who claimed to be an overseer of the properties left by Fernando Saraste, from April 1965 to August 1966, stated that the principal witnesses for the prosecution were paid, including the two victims of rape.[33]

Santiago Ang claimed that on the afternoon of February 18, 1963, he was at his house cooking. He denied participation in the robbery and the rape of Gloria Nacis. He also denied that he confessed verbally and pointed to his co-accused Sungcados and Hanginon as co-participants in the crime. He claimed he was maltreated by the investigating police officers.[34]

The alibi of Santiago Ang was corroborated by witnesses Lina Espina, Cresencio Guarin, Gavina Tenebro, Alfredo Salutillo.[35] Both accused Leonilo Hanginon and Maximinio Sungcados denied participation in the crime, claimed they never made any verbal confession to the investigating police authorities, and that they were maltreated. They both claimed that in the afternoon of February 18, 1963, they were at the store of Gonzalo Mursillos at Guiling, Hagonoy, Davao.[36]

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[32] pp. 3-32. t.s.n., May 5. 1965: pp. 7-34. January 19. 1966: pp. 2-12. t.s.n., March 23. 1966: pp. 58-85. t.s.n., Jan. 22. 1966: pp. 86-104. t.s.n., Oct. 19. 1966: pp. 252-258. t.s.n., March 26. 1968.

[33] pp. 68-90. t.s.n., June 17. 1966.

[34] pp. 95-109. t.s.n., January 19. 1966.

[35] pp. 105-117. t.s.n., May 3. 1967: pp. 120-126. t.s.n., May 3. 1967: pp. 127-130. t.s.n., June 13. 1967: pp. 130-132. t.s.n., June 13. 1967: pp. 133-141. t.s.n., June 14. 1967.

[36] pp. 122-135. t.s.n., January 19. 1966: pp. 136-144. t.s.n., January 19. 1966.

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Accused Cesar Orias claimed that at the time the crime he was accused of occurred on February 18, 1963, he was staying in Iligan City and he could not be at Padada, Davao. He denied participation in the robbery, killing of Saraste and the rape of Gloria Nacis and Benigna Zamora.[37]

Accused Luis de Guzman alleged that on February 18, 1963, he was at Davao City, at about 5:00 p.m., to collect his pay as laborer in the City Engineer's Office and it was physically impossible for him to be at Padada, Davao, when the crime took place. His alibi was corroborated by Jeffrey Mojares[38] and Alfredo Naraval.[39] The trip from Davao City to Padada, Davao is about two hours.

Accused Ricardo Tibay claimed that on February 18, 1963, he was at Lapanday, ten kilometers from Davao City, employed in the bodega of Vicente Ang. At about 5:00 p.m. of that date he was working in that place, shelling corn with a machine.[40]

The theory of the defense, based on the lone testimony of Delfin Gillado, that the principal prosecution witnesses, including the victims Gloria Nacis and Benigna Zamora, were paid witnesses, and that no actual rape took place is inherently weak and hardly deserves credence, not only because of the clearly straightforward and candid narrations of eyewitnesses to the crime, but also because of the doubtful sincerity of witness Gillado. Gillado's testimony is not without ulterior motive. He has reason to perjure in his testimony, motivated by vindictiveness, for he was dismissed as extrajudicial administrator of the properties left by the victim Fernando Saraste. He was replaced by one Alcoba. Gillado showed his disappointment when he complained to Atty. Reyes several times.[41]

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[37] pp. 186-194, t.s.n., Oct. 24, 1967.

[38] pp. 154-174, t.s.n., March 13, 1968; pp. 174-178, t.s.n., March 14, 1968; pp. 178-192, t.s.n., March 14, 1968.

[39] pp. 230-238, t.s.n., March 25, 1968.

[40] pp. 212-221, t.s.n., March 18, 1968; pp. 239-248, t.s.n., March 25, 1968.

[41] pp. 84, 85, t.s.n., January 19, 1966.

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While prosecution witness, Sgt. Lascuña did admit he signed a receipt for ₱200,[42] the amount was never received, for the policemen were made to believe by Gillado, himself, that due to the efforts of the policemen in the investigation of the crime, the relatives of the victims were willing to give as Christmas gift and for police uniforms the said amount.[43] Sgt. Lascuña denied having received any money from Gillado.[44]

The record of this case clearly manifests a basis for the apprehension and prosecution of accused Santiago Ang, Mixiмo Sungcados and Leonilo Hanginon as among those who perpetrated the crime. In the first week of March, 1963, victim Benigna Zamora was shown by Policeman Sayson some 9 to 10 photographs of persons. One[45] was selected and identified as the picture of a man who participated in the crime.[46] On the basis of such identification, Santiago Ang was arrested. Upon being investigated by Sgt. Lascuña, Santiago Ang admitted verbally his participation in the crime and mentioned as his companions Leonilo Hanginon and Maximo Sungcados.[47] When Leonilo Hanginon and Maximo Sungcados were arrested, they were identified by victim Gloria Nacis.[48]

It is difficult to believe that accused Santiago Ang was maltreated by the police authorities to force him to confess to the crime. Ang's oral confession was indeed reduced to writing, but when he refused to sign the same, he was not forced to do so.[49] They were no marks or signs of injuries whatsoever on Ang's body.[50] Also significant is the refusal of Ang to be examined

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[42] Exhibit "2".

[43] pp. 260, 261, t.s.n., March 26, 1968.

[44] pp. 260, 261, t.s.n., March 26, 1978.

[45] Exhibit "F" — Picture of Santiago Ang.

[46] p. 116, t.s.n., May 16, 1966.

[47] p. 6, t.s.n., May 5, 1965.

[48] pp. 7-9, t.s.n., May 5, 1965.

[49] p. 18, t.s.n., January 19, 1966.

[50] p. 100, t.s.n., July 18, 1967.

Supreme Court E-Library

by a doctor although there was a supposed permission from Acting Chief of Police Bisaya.[51]

The oral confession of accused Ang, Sungcados and Hanginon were reduced into writing, but for reasons only known to them, they refused to sign the same.[52] These oral confessions were established through the testimonies of Sgts. Victor Lascuña and Luis Gonzaga.[53] Oral confessions are admissible, for it is not necessary that the confession be in writing.[54] What is necessary is credible evidence that the oral confession was really made.

The positive identification of all the accused as participants in the crime have been made by eyewitnesses Cristina Sordilla, Benigna Zamora, Gloria Nacis and Nestor Nuñez. The narrations of Cristina, Benigna and Gloria as to what happened in the house of victim Fernando Saraste in the twilight of February 18, 1963, clearly coincide with each other and give a vivid picture of the events. They testified in a simple, direct manner, indicative of sincerity, and strongly manifesting that these witnesses were telling the truth. There is no known or shown motive why those witnesses should falsely testify against the accused. The inconsistencies in the narrations of Gloria Nacis and Benigna Zamora on minor details cannot adversely affect their credibility.[55] Minor inconsistencies on testimonies are indicative that the witnesses were not coached nor rehearsed.[56]

Witnesses Cristina, Benigna and Gloria were able to identify the accused because the crime was perpetrated when there was still day light. In the month of February, there is still light at five in the afternoon and even up to an hour late. These

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[51] pp. 92-93, t.s.n., July 18, 1967.

[52] p. 18, t.s.n., January 19, 1966.

[53] pp. 11-12, t.s.n., January 19, 1966.

[54] *People vs. Macaso*, 86 Phil. 272.

[55] *People vs. Otto, et al.*, 49 SCRA 306.

[56] *People vs. Paz*, 14 SCRA 132.

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witnesses had sufficient time to identify the accused because the crime took place for about one hour, and both Benigna and Gloria were raped by persons in the group.

The defense of alibi cannot prevail over the positive identification of the accused by witnesses.[57] Victims Benigna Zamora and Gloria Nacis positively identified all the accused.[58]

For alibi as a defense to prosper, it must be clear and convincing as to preclude the possibility of the presence of the accused at the scene of the crime, while the evidence as to identification of the accused must be weak and insufficient.[59] Accused Ang, Hanginon and Sungcados were not precluded from being present at the scene of the crime because they were all residents of the barrio of Guihing, Hagonoy, Davao, near and adjacent to Paligue, Padada, Davao, scene of the crime.

As to accused Luis de Guzman's defense of alibi, the same cannot prevail over the positive identification made by the victim Benigna Zamora who recognized and remembered Luis as the person who raped Benigna in the afternoon of February 18, 1963. Alibi is easy to fabricate and cannot prevail over the positive identification by a credible witness.

Likewise, the defense of alibi interposed by accused Cesar Orias and Ricardo Tibay cannot prevail over their positive identification by Benigna Zamora, Gloria Nacis and Nestor Nuñez.[60]

The evidence of the prosecution sufficiently show that all of the accused acting in a concerted manner, together with three other still unidentified persons, committed robbery in the house of Fernando Saraste at Padada, Davao, in the twilight of February

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[57] *People vs. Casillas*, 30 SCRA 352: *People vs. Salip*, 30 SCRA 389: *People vs. Marquez*, 30 SCRA 442.

[58] p. 100, t.s.n., May 16, 1966: pp. 144-152, t.s.n., May 18, 1966.

[59] *People vs. Alcantara*, 33 SCRA 813.

[60] pp., 59-61, t.s.n., March 24. 1966; pp. 99-100, t.s.n., May 16, 1966; pp. 147-149, 149-153, t.s.n., May 18, 1966.

Supreme Court E-Library

18, 1963. Four of them entered the house, while the other five surrounded and guarded the premises, all being armed. During said robbery, victim Fernando Saraste was shot to death, while victims Benigna Zamora and Gloria Nacis were raped. Conspiracy among the accused has been established beyond reasonable doubt. Direct proof is not essential to establish conspiracy, for if a community of purpose among the parties to do some criminal act is shown, it is not necessary that the acts which are charged of or of which evidence has been given were specifically contemplated by them or included in their design.[61]

While this case was pending automatic review, accused Cesar Orias and Ricardo Tibay filed a petition for new trial with this Court, on the ground of newly discovered evidence (the alleged statement of prisoner Quintin Ybañez that it was his group that authored the crime for which the accused were convicted in this case).[62] When asked to comment on said petition, the Solicitor General commented that the alleged statement of prisoner Quintin Ybañez cannot be considered newly discovered evidence, and that the same is unreliable coming from a death convict who refuses to reduce the same in writing.[63] This Court denied the petition for new trial for lack of merit.[64]

This court was also notified on August 17, 1978, that accused Santiago Ang died at the New Bilibid Prison Hospital, Muntinglupa, Metro Manila, on August 7, 1978.[65] In the resolution dated September 5, 1978, We resolved to dismiss the case against Santiago Ang insofar as his criminal liability is concerned.[66]

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[61] *People vs. Carbonel*, 48 Phil. 868, citing Underhill's *Criminal Evidence*, p. 795, par. 491.

[62] p. 315, *rollo*.

[63] p. 323, *rollo*.

[64] p. 325. *Id*.

[65] pp. 438-439. *Id*.

[66] Resolution *En Banc* in G.R. No. L-29980, *People vs. Santiago Ang, et al.*, enclosed as last page of *rollo*.

Supreme Court E-Library

The crime committed is robbery with homicide and rape with the aggravating circumstances of band and dwelling. The rapes committed on the same occasion are considered an aggravating circumstance.[67]

WHEREFORE, the decision of the trial court dated July 24, 1968, being in accordance with law and the evidence, is hereby affirmed, except as to the penalty of death imposed on accused Santiago Ang who died on August 7, 1978, and against whom the case was dismissed in so far as criminal liability is concerned, with costs against the other accused.

SO ORDERED.

Teehankee, Makasiar, Antonio, Aquino, Concepcion Jr., Santos, Fernandez, Guerrero, Abad Santos, De Castro, and *Melencio-Herrera, JJ.*, concur.

Barredo, J., votes for life imprisonment, considering that more than ten years have already lapsed since his conviction by the trial court.

Fernando, C.J., took no part.

EN BANC

[G.R. No. L-30966. December 14. 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LUISITO BERNALES and JUANITO SINCO,** *defendants-appellants.*

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[67] *People vs. Bacsa.* 104 Phil. 136. and cases therein cited.